(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT

BILASPUR

W. P. NO. 352 / 2005

Petitioner : Rajshekar Singh Chandel
S/o Shri Jaleshwar Singh Chandel,
Aged about 21 years,
Student B.Sc Part-II Chaitanya Science & Arts College, Pamgarh
R/o Post Office Sankar Via Akaltara,
Dist : Janjgir Champa-(C.G.)

P.R. No. 331/05 Raipur
Presented by Shri Dani
dated 27.1.05

Versus

Respondents :1 Guru Ghasi Das University
Through the Registrar
Bilaspur, Dist : Bilaspur-(C.G.)

2. The Principal
Chaitanya Science & Arts College,
Pamgarh, Dist : Janjgir Champa-(C.G.)

WRIT PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF SUITABLE WRIT, WRITS, DIRECTION ETC TO DO JUSTICE IN THE MATTER.

(62)

I.A. F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.352 of 2005

Rajshekar Singh Chandel

- Versus -

Guru Ghasidas University and another

POST FOR ORDER ON 15TH MARCH, 2005

Sd/-
L.C. Bhadoo
Judge

(63)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.352 of 2005

Rajshekar Singh Chandel

- Versus -

Guru Ghasidas University and another

Present: -

Mr. Anil Singh Rajput, Advocate:	For the petitioner.
Mr. Manindra Shrivastava, Senior Advocate: with Mr. Amit Verma, Advocate	For respondent No.1.
Miss Sharmila Singhai, Advocate:	For respondent No.2.

ORDER

(Passed on 15th ~~February~~ March, 2005)

L.C. BHADOO, J: -

1. By this writ petition under Article 226/227 of the Constitution of India, the petitioner who is a student of B.Sc. Part-II of Chaitanya Science & Arts College, Pamgarh, has questioned the legality and propriety of the decision of the respondents to cancel his result of the subject Zoology of B.Sc. Part-I on the ground of mass copying.

2. Brief facts leading to filing of this writ petition are that the petitioner took admission in the year 2003 in B.Sc. Part-I in Chaitanya Science & Arts College, Pamgarh, which is affiliated with Guru Ghasidas University, respondent No.1 herein. Thereafter, in the year 2004, examination of B.Sc. Part-I was conducted by respondent No.1 at Pamgarh Centre in the same college, the petitioner appeared in that examination and result of the same was declared on 20th July, 2004. The petitioner was declared pass with 48.71% marks and mark sheet of the same was delivered to the petitioner on 4-8-2004. The petitioner took admission in B.Sc. Part-II and pursuing his studies in B.Sc. Part-II. Thereafter, the examination of B.Sc. Part-I of the subject Zoology which was conducted on 10th May, 2004 was cancelled on the ground that there was mass copying at the Pamgarh Examination Centre i.e. Chaitanya Science & Arts College, Pamgarh. Thereafter, respondent No.1 conducted examination of Zoology paper in the same centre and most of the students appeared in the examination, but some of

the students did not appear. All the students protested the cancellation of examination of the subject Zoology.

3. Further case of the petitioner is that looking to the future of the petitioner and the students of B.Sc. Zoology, it is very important that proper intimation should have been given to all the students by the Pamgarh College, but proper intimation was not given by the College as well as the University. Since the petitioner was allowed to take admission in the second year B.Sc. and the result of first year B.Sc. was already declared, he was shocked after hearing that the respondents had not accepted his examination form for appearing in B.Sc. Part-II examination. He made a representation on 5-1-2005, but there was no response on behalf of the respondent College or University. The action of the respondents is arbitrary, improper and illegal. Cancellation of the examination of B.Sc. Part-I Zoology after issuance of the mark sheet to the petitioner is illegal and arbitrary. Therefore, it has been prayed that the respondents be directed to allow the petitioner to appear in B.Sc. Part-II examination and quash the notification regarding cancellation of first year examination of Zoology paper.

4. Return has been filed on behalf of respondent No.1 University in which it has been mentioned that examinations of various courses of higher education of the session 2003-2004 were held at different examination centres in the colleges within the jurisdiction of respondent No.1 during the period from March, 2004 to May, 2004. Chaitanya Vigyan Avam Kala Mahavidyalaya, Pamgarh, a private college, was also made one of the centres of examination from where the students of that college in different classes appeared for examination of different subjects as per the schedule of examination circulated by respondent No.1. The examination of B.Sc. Part-I of Zoology 1st paper was conducted on 10-5-2004 at the said examination center. Answer sheets of the said subject were sent to the examiner and the examiner while checking the answer sheets found some peculiar features common in all the answer sheets of center No.91 i.e. Chaitanya Vigyan Avam Kala Mahavidyalaya, Pamgarh, pertaining to B.Sc. Part-I Zoology 1st paper and it was found that the answers written in all the answer sheets were verbatim same. It was also found that even the words of beginning of the answers, change of paragraphs and end of paragraphs were also verbatim same. It was also found that the mistakes in the answer sheets were found verbatim same. In addition to this, several features showing that all the answers were common and were written in the same manner containing the same mistake, omitting same things were found.

Having received such a report of the examiner made on 19-6-2004, serious view was taken by the Registrar of the University and opinion of another senior Professor was obtained. The other examiner also examined the matter and found that most of the answer sheets show similarity and submitted his report on 28-7-2004. Then the matter was placed before the Unfair Means Committee of the University and the Committee after meticulous examination of the entire material, answer sheets and report of the examiners, had decided to issue show cause notice to the Superintendent of Examination, and Principal of the College. Copy of the show cause notice dated 13-9-2004 is Annexure R-1. Replies of the Principal and other invigilators were received which are Annexures R-2 to R-4. Thereafter, the Unfair Means Committee in its meeting held on 24-9-2004 resolved to cancel the examination of particular center and accordingly, made recommendations. Copy of the minutes is Annexure R-5. Thereafter, recommendations of the Unfair Means Committee were placed before the Executive Council in its meeting dated 14-10-2004 and as per resolution No.10 the Executive Council accepted the recommendations and directed for action according to the recommendations. There upon, notification dated 28-10-2004 was issued to the effect that examination of B.Sc. Part-I Zoology 1st paper held at Centre No.91 was cancelled. Copy of the notification is Annexure R-6. On 11-11-2004, revised result (Annexure R-7) was also notified which was received by the Principal of the College. It was decided to conduct the examination of the same subject again taking into consideration the career of the students and a decision to that effect was notified on the College Notice Board, and the students submitted their examination forms. The petitioner's contention is wholly unacceptable that he did not know about it. As a matter of fact, the petitioner is making false statement because as has been informed, the petitioner fully knew about all this development of cancellation of examination and holding fresh examination. In fact, he himself had filled the examination form also, photocopy of the same is Annexure R-9, and roll No.90655 was allotted to the petitioner, but he failed to appear in the examination, which was held on 23-11-2004 and result of the same was declared on 13-1-2005 which is Annexure R-11. Even those students who could not pass in this examination, considering that examination as main examination, a supplementary examination was also declared vide notification dated 13-1-2005, and in that examination also 12 students had again appeared which was held on 21-2-2005.

5. Return has also been filed on behalf of respondent No.2 in which it has been specifically mentioned that whatever decision was taken by respondent No.1 was notified on the Notice Board. The petitioner's case is that he was not informed is fully false. Even pursuant to the notification, the petitioner himself filled the examination form, but failed to appear in the same. Therefore, it has been prayed by the respondents that the writ petition be dismissed.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner argued that before cancellation of the examination no opportunity or no show cause notice was served upon the petitioner or other students to explain their stand and thereby principle of natural justice has been violated. He further submitted that once the copies were evaluated, result was declared and the petitioner was given admission in the second year B.Sc., the respondents were not entitled to cancel the examination of first year B.Sc. thereafter. Apart from these two grounds no ground was raised by learned counsel for the petitioner.

8. On the other hand, Mr. Manindra Shrivastava, learned Senior Advocate argued that the question of issuance of show cause notice to the students (examinees) is concerned, as this was a case of mass copying, it was not necessary to issue show cause notice to all the students. But, in fact all the precautions and care was taken by respondent No.1 before cancelling the examination in order to ensure that no prejudice is caused to the students and their interest should not be harmed without any basis. Therefore, first of all when examiner reported the matter about mass copying, then in order to have second opinion, these copies were sent to a senior Professor who also was of the same view and therefore, the matter was placed before the Unfair Means Committee for its consideration and even explanations of the Principal and Invigilators were also sought. The Unfair Means Committee after considering the reports of the examiners and other relevant material reached to the conclusion that the report of the examiners is correct, and accordingly, recommended for cancellation of the examination. Thereafter, the matter was placed before the Executive Council and the Executive Council also after considering the material accepted the recommendations of the Unfair Means Committee. Therefore, in facts and circumstances of the case, it cannot be said that any principle of natural justice or substantial justice has been violated in this case.

9. As far as the second point raised by learned counsel for the petitioner, learned Senior Advocate Mr. Manindra Shrivastava argued that when the report of the examiners was being processed, in the mean time, inadvertently, the result was declared, but that cannot be made a ground for quashing the decision.

10. Having heard learned counsel for the parties, I have perused the relevant record and case law on the point. Additional points raised by the respondents herein in their return have not been denied by the petitioner by filing a rejoinder. Apart from that in his petition, the petitioner has mentioned that he was never informed about the cancellation of examination. But this fact stands belied by the fact that even the petitioner filled the examination form for the examination which was to be conducted again of the subject Zoology 1st paper and even he was allotted roll No.90655, but failed to appear in the examination. Therefore, as per the settled law, the petitioner's petition is liable to be dismissed on the ground of concealment of facts while filing the writ petition before this Court. For this view, I am supported by the decision of the Apex Court reported in **(1983) 3 SCC 333 (Dr. Vijay Kumar Kathuria vs. State of Haryana and others)**, in which the Apex Court held that on false representation and reckless allegations the petitioners are disentitled to getting any relief from the Court.

11. As far as the question of issuing show cause notice to the petitioner and others students before cancellation of examination is concerned, as per the facts of this case, this case was of mass copying by all the students at the examination center, therefore, neither it was necessary nor possible to issue show cause notice to all the students and ask for their explanation. In the present case when the examiner reported about mass copying, then in order to have second opinion about the same, copies were sent to another Professor who also was of the same view which was expressed by the first examiner, and therefore, the matter was referred to the Unfair Means Committee which considered all the material and reached to the conclusion that the recommendations of the examiner is correct. Again the matter was placed before the Executive Council of the University, which also considered the material and accepted the recommendations. As has been mentioned in the return that the examiners found verbatim answers in all the answer sheets, even it was found that the wordings of beginning of answers, change of paragraphs and end of paragraphs were also verbatim. Not only this, even it was also found that the mistakes in the answer sheets

were found verbatim same. In addition to this, several features showing that all the answers were common and omitting the same things were found. Based on the experience and expertise in the subject, in the first instance, the first examiner reached to the conclusion that there was mass copying and his opinion was confirmed by another Professor of the same subject, and the matter was considered by the Unfair Means Committee also by the Executive Council. Therefore, it cannot be said that the said decision of respondent No.1 to cancel the examination stands vitiated on account of violation of principle of natural justice by not giving show cause notices to the students.

12. In this connection, the decision of the Orissa High Court reported in **AIR 1995 Orissa 229 (Miss Mamata Maharathi and others v. Council of Higher Secondary Education, Orissa and another)** is relevant, in which the Orissa High Court held that on the basis of flying squads reports that examinee involved in mass copying, there was outside interference and atmosphere or violence in examination hall/premises; in such case question of following principles of natural justice does not arise. The Court further held that there are chances that some good students' interest is also effected by cancellation of such examination, but that cannot be made ground for arriving at a decision that the impugned decision is bad.

13. In the matter of **Madhyamic Shiksha Mandal, M.P. vs. Abhilash Shiksha Prasar Samiti and others** reported in **(1998) 9 SCC 236**, the Apex Court held that cancellation of the examination on the report of the Naib Tehsildar who visited the centre and found the students copying with impunity even before the distribution of question papers, interference by the High Court in such matters was not called for. It was further observed that some innocent students might have suffered due to the cancellation of examination, but that cannot be made ground for assailing the said decision.

14. In the matter of **Biswa Ranjan Sahoo and others vs. Sushanta Kumar Dinda and others** reported in **(1996) 5 SCC 365**, three Judges' Bench of the Apex Court held that failure to issue notices on adjudication of a case of mass malpractice in selection process, where answer-books of various successful candidates showing upwards alteration of marks at several places and the answer-book of a particular candidate found to have been examined by a different examiner who had noted the marks in pencil. In such a case of mass malpractice the State Administrative Tribunal rightly

nullified the selection without issuing notice to the persons selected in such selection.

15. Full Bench decision of the Delhi High Court in the case of **Master Vibhu Kapoor v. Council of Indian School Certificate Examination and another** reported in **AIR 1985 Delhi 142** relied upon by learned counsel for the petitioner is of no assistance to the petitioner because that was not the case of mass copying and the answers of the petitioner were found to be similar to those of another student and no notice was given to the delinquent or his father or no opportunity of hearing was given and invigilators were not examined, hence, the Court quashed the action. But, in the instant case as it relates to mass copying and this matter is squarely covered by the decision of the Orissa High Court {**Miss Mamata Maharathi (supra)**} as well as the judgments of the Apex Court mentioned above, as such this authority is not applicable in the present case.

16. Learned counsel for the petitioner also relied upon the decision of the Apex Court in the matter of **Rajesh Kumar and another v. Institute of Engineers (India)** reported in **AIR 1998 SC 5**. As has been mentioned above, in the first instance, this was not a case of mass copying and the Apex Court quashed the decision of the Institute of Engineers finding the procedure defective which was adopted by the Institute for arriving at a decision that the petitioner was involved in copying. The facts and circumstances of that case were entirely different from the present case. In that case similarity of answers was made ground for cancellation of examination of the petitioner whereas, in the present case, as has been mentioned that the examiner after evaluating the answer sheets of all the students found that the answers were not only similar, but paragraphs were similar, even mistakes were similar, and omissions were also similar. Therefore, in view of the above facts, the facts and circumstances of the present case are not similar to Rajesh Kumar's case. Hence, the judgment of the Apex Court relied upon by learned counsel for the petitioner is distinctive on the facts and not helpful to the petitioner.

17. Therefore, in the facts and circumstances of the case, it cannot be said that in this matter principles of natural justice have been violated or the petitioner was entitled for show cause notice before cancellation of the examination.

18. As far as the second point raised by learned counsel for the petitioner that when the result was declared and the petitioner was allowed to take

admission in the second year, the respondents were not entitled to cancel the examination, and when the first examiner reported the matter then the Registry ought to have withheld the result and once the result is declared, the petitioner acted upon that result and took admission in the second year, thereafter, cancellation of the examination amounts to serious prejudice to the interest of the petitioner, as such on this ground also the order is liable to be quashed. The argument advanced by learned counsel, in the first instance appears to be prima facie attractive and reasonable. But, when the facts of the present case are critically examined, evaluated and objectively considered, then the ground raised by learned counsel for the petitioner is of no merit for the reason that while cancelling the examination on the ground of mass copying in order to protect the interest of the students, the Executive Council of respondent No.1 decided to conduct a separate examination of the same subject i.e. Zoology 1st paper, and treating that examination as main examination, allowed the students to appear in the examination and the same was held on 23-11-2004, in which number of students appeared and many of them passed the examination also. Even those students who could not pass were made eligible for supplementary examination and they were allowed to appear in the supplementary examination, which was also conducted on 21-2-2005, and in that examination also 12 students appeared. Therefore, it cannot be said that after declaration of the result if the examination is cancelled then same has seriously prejudiced the right of the students and also of the petitioner, because all the students including the petitioner were given opportunity to reappear in the same examination in order to prove their worth and even that examination has been treated as main examination and one supplementary was also conducted, in that also the petitioner failed to appear. Even though the petitioner filled the examination form and he was allotted the roll number, but he failed to appear in the same. This fact itself shows that the petitioner's claim is not bona fide and fair. On the contrary, conduct of the petitioner confirms the opinion of the examiner that there was mass copying in the examination. Therefore, the ground raised by the petitioner is of no merit.

19. Of course, when the first examiner reported the matter about mass copying and the matter was referred to the second examiner, who also agreed in mass copying, in all fairness, while processing the matter further the University ought to have withheld the result of the Zoology 1st Paper and only after taking a final decision by the Executive Council, respondent No.1

ought to have published the decision taken by the Executive Council. From facts it appears that there was no co-ordination among various branches of the University which was preparing the result and which was looking after the case regarding mass copying. In such a case, all the branches of the University must have worked in a coordinated manner in order to avert such lapses, which effect the credibility and reputation of the Institution. I hope that the Registry of the University and the Vice-Chancellor will look into this aspect, so that such lapse should not re-occur in future.

20. Now, coming to the question of judicial review by the High Court, in the matter of **Chairman, J & K State Board of Education vs. Feyaz Ahmed Malik and others** reported in **(2000) 3 SCC 59**, in the case of cancellation of examination on account of mass copying the Apex Court observed that

> "While judging the authority or otherwise all steps taken by authorities of the Board to take action against candidates taking resort to mass malpractice it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. The decision of such an expert body should be given due weightage by courts. In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in charge of the institutions. In such matters the court should try not to substitute its own views in place of the authorities concerned nor thrust its views on them. That is not to say that the court cannot at all interfere with the decisions of the authorities in such matters. The court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates."

21. Therefore, the Courts are not expected to interfere in the cases where some decision has been taken by the Board or University based on their expertise and experience for maintaining higher standards of education and proper conduct of examination. The Courts must give due weightage to such decision of the expert body and that is also necessary in order to maintain discipline in the educational institutions and conduct of examination. However, the Courts are not precluded from exercising its power of judicial review in order to correct any error and where the authority found lacking in complying with the provisions of rules, regulations and notifications issued by the Board or University, the Courts can certainly step-in in order to remedy the manifest injustice perpetrated on the

candidates and where the Court reaches to the conclusion that if the order impugned is allowed to exist then same will amount to failure of justice.

22. Therefore, in view of the above discussion, I am of the considered opinion that the decision for cancellation of examination on the ground of mass copying was taken after taking all precautions and after objective assessment of the ground situation and material placed before the Executive Council as in the answer sheets paragraphs and even mistakes and some other features were found to be common and verbatim same. On that ground, the experts who are dealing with these subjects regularly had taken a decision. The petitioner has not been able to brought on record any circumstance, which makes this decision perverse or bias or arbitrary, or contrary to the rules and regulations, and notifications issued by the University. Therefore, interference by this Court is not warranted. The petitioner has not been able to make out a case for exercise of judicial review by this Court by invoking extraordinary jurisdiction under Article 226/ 227 of the Constitution of India.

23. In the result, the writ petition fails and the same is dismissed.

Sd/-
L.C. Bhadoo
Judge

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